

DON E. BATES

IBLA 81-668

Decided June 25, 1981

Appeal from the decision of the Arizona State Office, Bureau of Land Management, returning the notice of location, map, and filing fee for the Little Nugget mining claim.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Recordation

A copy of the official record of the notice of location for a mining claim located after Oct. 21, 1976, must be delivered to and received by the proper Bureau of Land Management office within 90 days after the date of location in order to be filed timely. Depositing a document in the mails does not constitute filing.

APPEARANCES: H. Berkeley Rourke, Esq., Parker, Arizona, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Don E. Bates has appealed the decision of the Arizona State Office, Bureau of Land Management (BLM), dated April 20, 1981, returning the notice of location, map, and filing fee for the Little Nugget

mining claim and declaring the claim abandoned for failure to file a copy of the notice of location for the claim with BLM within 90 days after the date of location as required by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976), and Departmental regulation 43 CFR 3833.1-2.

Appellant's notice of location for the Little Nugget claim, executed on January 19, 1981, indicates that the date of the claim's location was January 14, 1981. The notice does not give a complete description of the location of the claim; it states that it is located in secs. 23 and 24, T. 4 N., R. , Gila and Salt River meridian. Appellant mailed the copy of the notice of location to BLM by U.S. Postal Service express mail on January 19, 1981. It arrived at BLM on April 16, 1981, 92 days after the date of location.

In his statement of reasons, appellant argues that he should not be penalized because the post office lost his filing. He attaches a copy of an amended notice of location for the Little Nugget claim which was executed on February 5, 1981, and recorded with the Yuma County recorder's office on February 6, 1981. This notice also gives the location date for the claim as January 14, 1981, but describes the location as secs. 23 and 26, T. 4 N., R. 21 W., Gila and Salt River meridian, Yuma County, Arizona.

[1, 2] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of location.

The pertinent regulation, 43 CFR 3833.1-2(b), provides as follows:

The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office), within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location * * *.

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

The Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his filings. Johnnie Finnegan, 48 IBLA 79 (1980); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979); Amanda Mining & Manufacturing Association,

42 IBLA 144 (1979). Filing is accomplished when a document is delivered to and received by the proper office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f).

Neither the original notice of location nor the amended notice of location for the Little Nugget claim was received timely by BLM. This Board has no authority to excuse a late filing. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

